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ROUNDTABLE ON ABORIGINAL PEOPLES' PARTICIPATION IN CANADIAN FOREIGN POLICY

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EXECUTIVE SUMMARY

The "Roundtable on Aboriginal peoples' Participation in Canadian Foreign Policy" resulted from the vision and work of the Director of the Native Law Centre of Canada, Professor Sakej Youngblood Henderson. His plans for this meeting were realized through the generous support of the Canadian Centre for Foreign Policy Development, which works with Ottawa's Department of Foreign Affairs and International Trade (DFAIT).The purpose of the Roundtable was on evaluating our past efforts in foreign policy and suggesting how to improve the structure and process. The objective of the Roundtable was to enable a more inclusive and respectful approach of the constitutional voice of Aboriginal peoples as a crucial part of foreign policy development of the postcolonial Canada nation.

The initial rountable, subsequent focus groups, and the vetting of the initial report was an opportunity to expand the imput of the small number of seasoned policy practitioners from within and beyond government to compare notes and experiences regarding Aboriginal participation in the development and implementation of Canadian foreign policy. The project was designed to create a better understanding of the multiple challenges facing Aboriginal participation in foreign policy making and develop ways of improving such participation. Adopting an approach that emphasized consultation, dialogue, and consensus, the roundtable sought to involve the broadest possible range of Aboriginal participants in the process. Through telephone dialogues and interviews with those involved, the exchange of opinion and a willingness to share experience demonstrated the importance of the roundtable and the necessity for the designing development strategies. These discussions, along with focus group sessions conducted before and

after the roundtable,* invested the discussion with a unique dynamic and vitality.

The Native Law Centre offered a relaxed and familar forum for participants. With its traditional receptiveness to open dialogue to share diagnoses of the existing situation and formulate new policy recommendations for promoting and sustaining increased involvement of Aboriginal peoples in Canadian foreign policy.

The roundtable and focus groups was intended to help inform Aboriginal peoples, especially the awaking Aboriginal youth as well as other Canadians about ongoing, sustainable processes and partnerships that encourage Aboriginal voices to be heard in Canada and around the world.

While the roundtable did not include officials from the Centre for Foreign Policy Development, nor from the DFAIT, it represented an initial session of reflection and candid dialogue to be followed after the report by a second session in Ottawa, including key officials from DFAIT and other government units and departments.

The roundtable addressed a number of issues: from the types of activities Aboriginal Canadians undertake as members of Canadian delegations through to means that might be employed to encourage young leaders from Aboriginal peoples of Canada to engage in international initiatives.

Although there were a number of recommendations that emerged from this session, most evolved from a core consensus regarding the constitutional nature of Aboriginal peoples voice in policy formation. This informed the importance of Canada establishing both an Aboriginal Secretariat to help co-ordinate, encourage, and sustain Aboriginal participation in Canadian foreign policy and a certificate program for effective training new Aboriginal appointments or participants in foreign

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* Especially important were the subsequent focus groups on these issues among Indigenous peoples at the Impact of NAFTA on Aboriginal Business in North America on Monday nigh (May 27 - 29, 2001) in Saskatoon and the discussion with the Canadian Embassy in Washington DC (June *, 2001).

policy Both projects would allow for "lessons learned" to be shared from past and ongoing international negotiations with future Aboriginal delegates, while also providing a forum for young Aboriginal leaders to learn best practices from their Elders. The Secretariat would act as an "incubation centre for enhancing Aboriginal leadership" especially among young people seeking to engage in foreign affairs and international development.

SUMMARY OF POLICY RECOMMENDATIONS

The Roundtable and focus groups emphasized the need to enhance awareness of and deepen the involvement of Aboriginal peoples in policy formation and diplomacy that represents Canada. The participants recommended the following reforms:

The Constitutional Voice of Aboriginal peoples of Canada

Canada needs to build an effective and responsible Aboriginal voice in foreign affairs consistent with the constitutional mandates of s. 35(1) of the *Constitution Act, 1982*. Structuring, promoting, and coordinating these Aboriginal voices are constitutional duties, rather than a political or interest group issue. Indian and Northern Affairs, Canada is not the constitutional voice of Aboriginal peoples; it is the voice of the federal administration. The courts have already outlined and mandates the necessity of constitutional consultation on all issues affecting their s. 35(1) rights. These guidelines are applicable to foreign affairs. Many of the recommendations follow on this central concept.

Aboriginal Secretariat

Projecting the constitutionally protected values and heritages of Aboriginal peoples require that their voice be engage in all aspects of foreign policy-making on a regular basis.The federal government, in partnership with Aboriginal leaders and stakeholders of constitutional rights, should develop an Aboriginal Secretariat to help consolidate and co-ordinate official international activities undertaken by members of Aboriginal peoples of Canada. A key focus would be on incubating leadership and emphasizing capacity and continuity. Under the umbrella of the Secretariat, a number of "tables" or functional areas of specialization are envisaged, allowing for increased expertise in key areas and enhanced continuity on foreign policy issues. It is recommended the Secretariat be placed outside DFAIT, and the authority and auspices of the Governor General or national Aboriginal institutions.

A steering committee should be established to undertake a preliminary report on this initiative.

Indigenous Diplomacy Training

A certificate program for training for new appointments or selected Aboriginal participants in foreign affairs is necessary. This critical initiative could involve experienced Aboriginal representatives, experienced NGO leaders, and DFAIT. It should be developed with the consultation of the Aboriginal peoples. It is proposed that the program be located at either the Native Law Centre or the Centre of International Indigenous Affairs at UBC College of Law.

Scholarships and Mentoring Positions

The Department of Foreign Affairs and International Trade, in partnership with other stakeholders, establish scholarships and mentoring positions to ensure that young Aboriginal leaders are able to participate in international delegations. Ideally, these positions would allow for integrated teams of Aboriginal delegates to work together, thereby ensuring enhanced representation and equality in terms of national averages of gender and age.

Outreach and Communications Strategy

Key mandates of the proposed Secretariat include education and access to information. It is suggested that electronic communication, especially the use of on-line sites and "portals", would be vital in linking international Aboriginal activities that reach across Canada and around the world. As well, knowledge and education centres be established to increase access to education focusing on the formulation and implementation of Canadian public and foreign policy.

Regular Meetings for Aboriginal Delegates

Ideally co-ordinated by the Secretariat, these meetings would allow consultation and responses between constitutional rights holders and all Aboriginal delegates who serve internationally on Canadian delegations

to compare notes and enhance communication. Moreover, there is an educational component attached to these gatherings, as current practitioners can offer advice to new and aspiring participants.

Designating Aboriginal Elders as Natural Resource People

Drawing on a model from Japan, the federal government should recognize the rare knowledge that Aboriginal Elders possess, and provide opportunities for them to led or inform policy debates. All the while ensuring that demands on time and health are respectful and with limited travel requirements.

Aboriginal Biodiversity Science Centre

Consistent with National Research Chairs developed with Canada, an Aboriginal Science Centre that honour Aboriginal knowledge relating to biodiversity and ecological knowledge. Such knowledge is constitutionally protected as Aboriginal rights by s. 35(1). Such a Centre could be modelled on the Native Law Centre, would ensure that traditional scientific knowledge can be taught and studied in respectful conditions through appropriate methodologies.

Initiatives to Advance the Indigenous Humanities

A serious lack of understanding of Indigenous Humanities is hampering policy formation in Foreign Affairs and international declarations. Initiatives are needed have to allow policy-makers to move from reductively racial views of Indigenous peoples to the deeper understanding of Indigenous civilization and humanity. To be effective, policies should reflect the situational, fluid, overlapping, and multi-layered nature of Indigenous humanities. Policies must be sensitive to the forming, competing, maintaining, and transforming Aboriginal knowledge and identities. Policy-makers need to deepen their understanding of Indigenous humanity to preserve and enhance Indigenous participation in policy processes and other mechanisms to hold institutions and governments accountable to Indigenous needs for development.

Initiatives to Protect and Enhance Aboriginal Languages, Heritages, and Knowledge

A number of government departments and other stakeholders should co-operate to ensure that Aboriginal languages, heritages, andknowledge are protected. They are constitutional protected.

THE ROUNDTABLE ON ABORIGINAL PEOPLES' PARTICIPATION IN CANADIAN FOREIGN POLICY

INTRODUCTION

This roundtable was an initial step towards reflecting upon, and attempting to enhance, recent efforts by the Government of Canada to include the voices and sensibilities of Canadian Aboriginal peoples in the formulation and implementation of Canadian foreign policy. This collaborative roundtable brought together a small group of experts – academics and practitioners – who have laboured, some for many years, to enrich the orientation and substance of Canadian foreign policy, especially regarding issues affecting Indigenous Peoples in this country and around the world. This session was a unique opportunity for these individuals to discuss and evaluate their experiences in the development of Canada's foreign policy and related international initiatives.

With the support of the Canadian Centre for Foreign Policy Development, the session was held on Friday and Saturday, May 18-19, 2001, in the relaxed setting of the Native Law Centre of Canada. The Centre is located on the eastern bank of the South Saskatchewan River at the University of Saskatchewan. As part of the initial introductions, the architect and Chair of the session, Professor Sakej Youngblood Henderson, Director of the Native Law Centre of Canada, explained the basic themes of this meeting. The roundtable was the result of informal discussions over the last decade among Aboriginal participants in policy-making in Canadian foreign affairs. He offered the insight that this introductory session might identify issues relating to co-ordinating and enhancing Aboriginal peoples' participation in the formulation and implementation of Canadian foreign policy. This session should propose a number of policy recommendations for the consideration of officials within the Department of Foreign Affairs and International Trade as well as other government departments and units. Finally, if feasible, he would connect this session to a future dialogue with relevant officials from

DFAIT. The themes raised by the session followed upon focus groups at different conferences and meetings, and an initial report was prepared for distribution and comment to a wide network of Indigenous peoples involved with foreign policy formation and implementation.

The broad objectives of this session were essentially three. First, as mentioned above, it was seen as a forum to share experiences, or compare notes, regarding Aboriginal participation in the creation and implementation of Canadian foreign policy. Second, participants suggested new and refined processes for promoting and sustaining the involvement of Aboriginal peoples, and their sensibilities, in foreign policy development for Canada. The continuous quest to broaden and expand these inclusive processes is meant to help advance new understandings of Aboriginal issues in this country's foreign policy. A third objective of the roundtable—especially of this report—was to provide additional information to, and promote further education of, interested members of the Canadian public, and especially members of Aboriginal peoples of Canada, regarding Aboriginal participation in Canadian foreign policy. This outreach and educational objective was specifically intended to help inform young members of Aboriginal peoples of Canada, its the future leader, about the evolution of processes which, with refinement, will ideally allow their voices and aspirations to be heard in Canada and around the world.

Prior to proceeding, invitations and attendance warranted comment. As usual, it was difficult to cordinate attendance. Although family emergencies and other unexpected obligations kept some potential participants from attending this roundtable, the multiple forums nonetheless allowed participants to share insights and exchange views on relevant subjects. A few invitees, who were unable to attend, not only offered their regrets but also forwarded their opinions on some of the substantive subjects of the session. The rapporteurs have attempted to include the insights and recommendations that were provided.

The rapporteurs for this session were: Lawrence Paskemin, an Aboriginal student in Commerce at the University of Saskatchewan who also participated in the Model Organization of American States, 2001,

and Rob Norris, a graduate student in foreign affairs, Co-ordinator of Communications and Program Development at the University of Saskatchewan International and associated with the University's new International Centre for Governance and Development.

Finally, a word of sincere appreciation was extended to Steve Lee, Executive Director of the Canadian Centre for Foreign Policy Development, and his colleagues, who had the vision to fund and support this roundtable. Appreciation was expressed for the time, efforts, and insights of all those who participated or added their voices in this timely and topical initiative.

DIALOGUE: REMARKS & REFLECTIONS

Speaking generally, the participants opened the substantive discussion by suggesting that an important challenge for members of Canada's foreign policy community, especially those within DFAIT, remained working to ensure that authentic Aboriginal voices are present in the formulation and implementation of Canada's international agreements and policies. They noted that ensuring the presence of Aboriginal voices as part of Canada in the international realm is often more challenging than it is under the rubric of federal-provincial-territorial relations.

The participants suggested to encourage full and candid discussion on sensitive topics and experience, the participants suggest that only the leaders of the discussion and presentors should be designated as speakers by the report. The rapportuers and report should not designate individual positions of the participants, but rather should stress the consensus on issues and recommendation of the participants.

The participants suggested that an opportunity exists to promote greater coherence between Canada's official position relating to international agreements and the implementation of various accords within, and beyond, Canada, especially as these agreements relate to Aboriginal peoples nationally and internationally. A number of examples were provided to highlight that Canada has, in the past, espoused and negotiated convincing positions within the international arena, but then provided less consideration or direction on how to operationalize these

successes or learn for the failures. The participants ask the question: "If we succeed diplomatically, then how do we actually proceed in implementing policy?" Four examples was discussed: the International Labour Organization's Resolution 169; work of the United Nations Human Rights Committee; the Biodiversity Convention; and issues associated with the Rio Process, and the International Indigenous Humanities efforts.

The participants explained further that these, and other, international issues need to be better understood and more adequately addressed, especially since *the Royal Commission on Aboriginal Peoples* (1996) directed most of its attention towards domestic concerns and conditions within Aboriginal peoples. Now a balance should be restored with a focus encompassing international initiatives available to, and dependent upon, Aboriginal peoples in Canada. As Professor Len Findlay would note later in the day, "the national always implicates the international and multinational."

The participants and colleagues at the Native Law Centre of Canada are increasingly aware of, and interested in, the potential of the Centre not only to serve ongoing Canadian diplomatic efforts, but also to prepare the next generation of Aboriginal leaders for the upcoming international and diplomatic challenges. The Native Law Centre is considering the creation of a certificate course in international diplomacy for interested students and practitioners. This course could help to prepare individuals from, and promote partnerships among, Aboriginal peoples involved or interested in various Canadian international initiatives. This training would help to reduce "turnover" of Aboriginal delegates to international conferences, which at times has been severe because of a lack of support, while allowing for knowledge to be passed from one generation of participants to the next. This certificate course would be built upon, and consistent with, early and ongoing efforts of two key individuals. The first, Kenneth Deer, is an insightful newspaper editor from Canada who is also the "grandfather" of contemporary international Indigenous initiatives in this country; he is associated with the World Council of Churches and is playing an important role in the

World Conference Against Racism. As well, the program could draw valuable lessons provided by a second mentor, Erica Daes, the "grandmother" of this international movement.

The discussion leaders were Professor Henderson, Lea Nicholas MacKenzie, Dr. John F. Harity, Wanda McCaslin, and Professor Len Findlay.

Mention of inclusive participation, especially women's leadership in international Aboriginal initiatives, provided Lea Nicholas MacKenzie. She is a seasoned independent consultant and former chief of staff to the AFN and political advisor to the National Chief and Associate Deputy Minister's Office in INAC.

Dr. John F. Harity, the Director of Canada's Biodiversity Convention Office, discussed the efforts of the negotiations and obtaining Aboriginal imput into policy making.

Wanda McCaslin, Research Officer and YIIP Co-ordinator at the Native Law Centre, then noted that building and sustaining trust was also an essential element of the DFAIT Youth International Internship Program that she co-ordinates on behalf of the Native Law Centre of Canada.

Professor Len Findlay, Director of the Humanities Research Unit at the University of Saskatchewan, and previous Vice President International of the Social Science and Humanity Confederation explained the international effort to affirm Indigenous Humanties with international organizations and institutes. His written comments can be found in **Appendix C**.

ENHANCEMENT OF CONSTITUTIONAL ABORIGINAL VOICE AND CONSULTATIONS

Professor Henderson summarized the need for the constitutional voices of Aboriginal peoples of Canada in foreign affairs. He explained the recent courts' explanation of the duty of good faith consultation between federal departments and Aboriginal peoples of Canada. The participants agreed that consultation and the enhancement of the constitutional Aboriginal voice was a key issue. Often the Aboriginal voice is wrongly viewed as an interest group, a vulnerable racial

minority, or the like. The Aboriginal voice is a constitutional voice in Canada and integral to foreign policy, which must be consulted, respected, and enhanced. The inclusion of an Aboriginal voice and sensibilities in foreign policy formation is a constitutional responsibility and duty under s. 35 of the *Constitution Act, 1982*, a bold and innovative approach and a unique Canadian model. If effective, other countries could examine and adopt this model. If ineffective, every Indigenous peoples will be affected. See Macklem, The Crown's Duty to Consult, **Appendix A**.

The guiding purpose of the constitutional reform was to end the silence of the Aboriginal voice and to give the Aboriginal peoples of Canada the constitutional authority in Canada. This constitutional power extends to the representation of Canada around the planet. The purpose of such innovative constitutional empowerment is to allow Aboriginal peoples of Canada belated self-determination and to allow them to be part of formulating Canadian policy and to end the appropriation of Aboriginal voice, pain, and suffering by other governmental agencies and civil society. The silence and the appropriation of the Aboriginal voice in foreign policy need to be remedied.

The burden of effective Aboriginal representation and articulation in policy formation, a primary concern of the participants, raised diverse points. The fragility of the endeavour lies in the dominant premises, styles, and solutions. Participants had no illusion about the necessity of effective enabling strategies as opposed to token and ineffective ones.

The fundamental issue is the need to represent Aboriginal style and sensibilities. Similar to biodiversity of the planet, all human diversity must be sustained and fostered to create a society of tolerance and respect. To create a just postcolonial society, a new relationship of tolerance and respect must be lived. Although Indigenous peoples have been victimised, they must be leaders in forging the art of conciliation and forgiveness. They must live a dignified and vigilant existence, and exhibit the best form of advocacy and relentless pursuit and eradication of colonialism, racism, and denial of human rights. Past portrayals of Aboriginal people as savages and primitive must be redressed by our

new quest for dignity through integrity. We must be intolerant of intolerance.

In pursuit of excellence and effectiveness in policy formation and analysis, participants focused on the courts holding of Canada's constitutional duty to "good faith" consultations with Aboriginal peoples in formulating Indigenous policies. Working within the spaces of power, colonialism, and racism, they stressed the need to build a dignified place for Indigenous peoples in the global village. To survive the collision of these destructive phenomena, they had to create new relations and tentative diagnoses. Now we are required to create remedies, boost resistance, and resolve to protect cultures, languages, and traditions against unbearable ignorance and fear. HMG Braker and B Freedman, "Consultation with First Nations Prior to Major Natural Resources Development and Other Projects "presented at "Environmental Law and Canada's First Nations" Pacific Business and Law Institute, Vancouver, November 18 and 19, 1999, **Appendix B.**

Canadian courts have acknowledged that the honour of the Crown is always engaged in the federal government's dealings with Aboriginal peoples, and once the government commences negotiation with Aboriginal peoples, it must conduct negotiations in good faith. The constitutional duty of the Crowns to consult with Aboriginal peoples is often explained as a consequence of the fiduciary relationship that exists between Aboriginal peoples and Canada. Courts have held that, because of its status as fiduciary, the Crowns must justify any statutory or policy infringements of Aboriginal and treaty rights recognized by s. 35(1) of the *Constitution Act, 1982*. And the judiciary has conceptualized the Crown's duty to consult in the event of such infringement as one aspect of the fiduciary obligation that required the Crown to justify infringements.

In *Delgamuukw*, the Supreme Court of Canada indicated that the content of the duty of consultation will vary with the circumstances. It established that this duty must be fulfilled in good faith, and with the intention of substantially addressing the concerns of the Aboriginal peoples. In most cases it will be significantly deeper than mere consultation. Some cases may even require the full consent of an

Aboriginal nation, particularly when provinces enact regulations in relation to Aboriginal or treaty rights. The courts have stated the duty falls on the Crown in general, and not on any particular decision-maker. Various ministries can, as it were, share the duty to consult. The participants felt that this duty to consult existed in the formation of foreign policy.

In addition, legislative recognition of the fiduciary obligation to and duties of consulting with Aboriginal peoples of Canada is manifested in statutory acts. For example, the environmental assessment legislation require notice, consultation, and participation when the Crown seeks to engage in or authorize activity that may adversely affect the interests of Aboriginal people, including interests associated with Aboriginal and treaty rights recognized and affirmed by s. 35. Depending on the relevant language, courts have tended to interpret such requirements in a more expansive manner than the general duty to consult the public requires.

In *Nunavik Inuit* v. *Canada (Minister of Canadian Heritage)(1998)* the federal court held that the federal government has a duty to consult, including a duty to inform and listen, and negotiate in good faith in relation to claims of Aboriginal rights. Relying on the jurisprudence and upon s.35 (1), the court sets out a number of principles that are relevant to foreign policy development:

- Subsection 35(1) represents the recognition of Aboriginal rights in the treaty process and the government's obligation within that process; it is a specific constitutional basis upon which subsequent negotiations can take place and requires a just settlement for Aboriginal peoples;

- The relationship between the Crown and the Aboriginal peoples, as well as the dealings between the parties should be given a generous interpretation in favour of the Aboriginal peoples;

- The honour of the Crown is at stake in its dealings with Aboriginal peoples;

- The fiduciary duty is enforceable and includes protection against unwarranted effects upon the aboriginal interests; and

- The federal government's responsibility to safeguard the aboriginal peoples' interests is equally applicable to the rights which relate to the land and the native interest in the land.

In general terms, the court stated that duty must include at least the absence of any appearance of "sharp dealing" disclosure of relevant factors, and negotiation "without oblique motive".

Other courts typically have not attempted to calibrate the content of the duty to the nature of the decision. Specifically, courts have taken a process-oriented approach to the context and content of the duty. The duty of consultaton requires Canada to provide a Band or First Nation that may be affected by government legislation or a decision with "full information" on the proposed legislation or decision; so that it may fully inform itself of the practices and views of the First Nation affected; and undertake meaningful and reasonable consultation with a First Nation that maybe affected by its decision.

In summary, Professor Henderson noted the following list of common law demands for constitutionally acceptable consultation with Aboriginal peoples:

- There is always a duty of consultation.

- Consultation is required where a decision has affected, or may affect, the rights and title of Aboriginal peoples or an Indian Act band .

- Consultation must be in good faith, with the intention of

substantially addressing the concerns of Aboriginal people whose lands are at issue.

- ❖ In some cases, a decision may require the consent of an Aboriginal nation, particularly where international law may affect constitutional rights of Aboriginal peoples.

bltConsultation arises where Canada is implementing conservation measures and it is also required where any action or measure, such as permit and application approvals, may infringe constitutional rights of Aboriginal peoples.

- ❖ Canada must fully inform itself of the effect of an international convention, law or regulation on constitutional rights of Aboriginal people, which includes getting these constitutional rights holders views concerning practices, customs or traditions giving rise to the Aboriginal or treaty rights.

Canada must allow Aboriginal peoples to make a reasonable assessment of the effects of Canada's position or what it is proposing, including giving sufficient data to the Aboriginal peoples. Depending on the circumstances:

- ❖ the duty to consult may imply rules of procedural fairness and require that Aboriginal peoples are entitled to such fairness and are entitled to know the case it has to meet and be able to respond.

- ❖ Consultation may be required early in the process and not simply when a decision is about to be made or only where issues of justification of infringement arise.

- ❖ It is up to Canada, and not the Aboriginal peoples, to initiate consultation.

- indent360Aboriginal peoples have an obligation to participate in consultation as well; it is a two-way street.

- The fact that a project may be time sensitive does not relieve Canada of its duty to consult—and duty may arise even where a project is near completion,

- However, a true emergency may be one factor in terms of determining the adequacy or reasonableness of consultation and whether an infringement can be justified.

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- d In order for consultation to be meaningful, in *R.* v. *Noel* (1995), the courts established Canada must take the views of Aboriginal peoples seriously, including the Aboriginal perspective, and it cannot simply ignore such views or make decisions which amount to rubber-stamp approval. In R. v. Marshall 91999), the courts established the constitutional duty to consult arises in respect of agreements between Canada and Aboriginal peoples, as well as to treaties, and requires much more than ministerial discretion in existing legislation. Where Canada has chosen to enter into multilateral or bilateral treaty negotiations, for instance the *Human Rights Covenants* or the *Convention to Eliminate Racial Discrimination*, that might affect the constitutional or statutory rights of Aboriginal people within Canada. Canada must negotiate and consult with the Aboriginal peoples and their representatives in good faith.

  The participants agreed that court-created duty to consult in good faith should be the capstone of the involvement of Aboriginal peoples in foreign policy development. They noted that approaches and strategies employed to include Canadian Aboriginal representation and

sensibilities in international negotiations appear uneven and inconsistent. Canada continually views Aboriginal representatives as an interest group or minority interest, rather than a constitutional recognised voice of Canada. Canada continues to view Aboriginal peoples as separate from (or inferior to) Canada and Canadians, then demand they act as they do not have separate constitutional power, rights and responsibilities. DFAIT believes that its agency is the sole voice of Canada, the nation, with some provincial whispers and citizens fora to create the appearance of democracy. Such a position is inconsistent with the Constitution of Canada and must be corrected. The issue for Aboriginal peoples is speaking meaning to power and being constitutionally respected in policy formation.

Formulation of foreign policy is a process haunted by uncertainties and diversities, a mixture of prayer, theory, and case study analysis done individually but judged collectively. Participants urged that foreign policy formulation and analysis in a democracy, and especially in globalization processes, should have a compelling voice of the peoples rather than elected officials or bureacracies. Yet, they felt that such a transformation may never come in the status quo. Participants noted the ubiquity and influences of interest groups in civil society in foreign policy is matched only by the ever-present hostility and efforts to undermine them by bureacracies. Both become the problem for which it was supposed to be the solution. Thus foreign policy process is certainly exhausting, hardly enlightening. In this context, the constitutional status and voice of Aboriginal peoples should be recognised and affirmed by all Canadian agencies dealing with foreign affairs; after all Aboriginal

peoples have been dealing with them since the arrrival of foreigner.

The participants noted that the government remains unaware of the constitutional voice of Aboriginal peoples of Canada. Under the Constitition of Canada, Canada asserts it cannot undertake new international obligations except in close consultation of the provinces. It has not taken a similar position to the "aborginal and treaty rights of Aboriginal peoples of Canada" pursuant to s. 35(1); they still ignore this part of the constitution of Canada, which is separate form both federal and provincial constitutional authority. To fufill the constitutional responsibility and duties to Aboriginal peoples, Canada needs not only training but administrative structuring to be effective. The importance and legitimacy of Aboriginal constitutional voices within the Canadian system of governance and foreign affairs is not a political issue—it is a constitutional duty of every agency under the rule of law and constitutionalism. When representatives from Aboriginal peoples of Canada participate in international delegations, they have a unique place at the table: Aboriginal representatives are neither part of the government, nor part of civil society. They represent the Aboriginal peoples of Canada, a bright line marking the innovations of Canadian society to the world.

BIODIVERSITY AGENDA

Dr. Harity spoke about the inevitable and complementary connections between enhancing Aboriginal voice in policy decision and the Biodiversty requirements for consultations—and the challenge of connecting traditional knowledge and contemporary science, decision-making and economic motivations. Next, he spoke about the importance of including Aboriginal peoples in processes of both global and local decision making, thereby encouraging respect for knowledge that is

considered sacred as well as constitutionally protected in Canada. He also pondered the "appropriate ways" that were available to enhance fair sharing between Aboriginal peoples and other international actors and communities. He explained the complex connections that exist between sources of traditional knowledge and concerns over profit, again pondering aloud the appropriate mechanisms which might help to ensure respect for traditional knowledge and an equitable sharing of benefits between Indigenous Peoples and other stakeholders. He lamented that thus far, modern laws and policies in this area seem less than adequate. He expressed concern that Indigenous women are too often excluded from decision-making mechanisms and processes. Before moving on, Herity noted that all of these issues constitute essential elements of, and challenges for, contemporary "environmental conservation."

Dr. Harity reiterated the importance of establishing trust among stakeholders and representatives. He noted that during negotiations relating to the Convention of Biodiversity, Article 8(j) focused on equitable sharing of benefits among stakeholders. Negotiations addressed tensions relating to instrumental applications of traditional knowledge. He added that the consultative process undertaken with Indigenous Peoples during this process was uneven. After comparing elements of "8(j)" in the Convention with on-going discussions about land claims in Canada, the Director made some general comments relating to "lessons learned" from "8(j)" of the Biodiversity Convention.

Dr. Herity explained, there is growing interest in Aboriginal peoples becoming more involved with, and integrated into, the management of resources, including fisheries, agriculture, and forest products. There is increasing recognition that some communities can sustain healthy and happy lives from "the land" in a model of "living sustainably in the community context." Although some positions articulated by the Canadian government during international agreements do not always appear to be "progressive," leaders of Canada's international delegations are still able to make some progress on key issues. He also noted the increasing importance of connecting on-going governmental activities with initiatives being taken by other actors within Canada, especially

Aboriginal non-governmental organizations (NGOs).

Participants saw the importance of establishing mechanisms that not only encourage greater co-operation between Canadian societal and state actors within the international realm, but also allow for lessons learned to be shared with other Aboriginal participants in various international initiatives. They noted that Aboriginal representatives from Canada often lack the opportunity, as well as the institutional setting, through which to share experiences and begin compiling lessons learned from, and about, international diplomacy. This was characterized as unfortunate and unnecessary "fragmentation" of valuable and experienced human resources.*

Dr. Harity noted that attempts at Aboriginal consultation were problematic for a number of reasons. For example, initially Aboriginal representatives with little experience were "thrown in" to situations for which there was little preparation and inadequate funding. The situation was further exacerbated by a poor selection process for preliminary meetings and the lack of Aboriginal attendance at teleconferencing and roundtable meeting because of the over-commitments of experienced Aboriginal peoples in contemporary events. It was further troubled by

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* Within days of the Roundtable discussion, in June *, Wanda McCaslin and Rob Norris were able to speak with representatives from the Canadian Embassy in Washington DC concerning the potential economic opportunities that might be available to Aboriginal Canadians if a knowledge organization, like the Native Law Centre, could channel this collective international expertise into global and regional institutions that are increasingly concerned with, and focusing on, Indigenous Peoples within the global context. These institutions might include, but would not be limited to: the World Bank, the Asian Development Bank, the Inter-American Development Bank and other international financial institutions and entities concerned with Indigenous governance and economic development. Essentially, education and experience gained serving on Canadian delegations might be refined by Aboriginal Canadians, in a co-ordinated manner, and marketed to a number of international organizations and institutions, thereby enhancing the understanding and capacities of these organizations and providing new and increased international opportunities for Aboriginal peoples of Canada.

the presence of seasoned and savvy experts with entrenched views regarding some sensitive subjects.

The participants highlighed the example of the similar problems with the Advisory Committee of the World Conference Against Racism. They noted the political organization were not structured or funded for foreign policy and the federal agencies unstructured for the constitutional voice of Aboriginal peoples. Unfortunately "bureaucratic politics" hampered the creation and effectiveness of an Aboriginal Committee in the preparation within most federal departments.

4FOREIGN POLICY EXPERIENCES AND ISSUES

The participants expressed concern that, too often, Canada sends Aboriginal "tourists" on its international delegations, thereby providing the appearance of inclusive co-operation on international delegations. Lacking any formal training in international protocols and diplomacy, such as the proposed certificate program, the Aboriginal participation is ineffective. Many delegates are ultimately "segregated" out of the negotiation process because of a lack of knowledge about international relations and multilateral institutions like the United Nations. The participants explained that there is a steep learning curve for new delegates to a conference sponsored by organizations like the United Nations. It appears too that government officials make inconsistent attempts to bring forth Aboriginal expertise on policy issues, relying of Aboriginal politicans or bureacrats. While there may be a need for generalists, most often a technical level of experts is required to participate effectively. The roundtable organizers noted the lack of any central list of Aboriginal experts or participants or Board members in foreign policy in any agency. The lack of skills or knowledge ensure limited accountability and response from national Aboriginal organizations. Participants were concerned that "well intended actions are often poorly implemented" and that more needs to be done to ensure that agreements that are negotiated, signed, and ratified by governments are ultimately enacted.

Participants stress the problems related to the "tremendous burden" associated with representing the broad and diverse Aboriginal peoples within Canada. This discomfort appears to arise from at least two sources. First, despite years of experience and education, delegates still feel awkward in some international settings, especially during the first meetings; feeling a lacks of authenticity and of the background qualifications and knowledge for such positions. Second, requests often come from government agencies for participation in international initiatives at the last moment, with no time to prepare.

Another representational discomfort experienced is the dilemma of whether to turn down these offers, thereby often closing the window of opportunity for Aboriginal participation or to commit already over-extended resources by engaging in vital local and global initiatives. Finally, participants expressed concern about the nature of representation within the international realm by asking: "who do we speak for?" and "to whom are be accountable to?"

Dr. Herity addressed Aboriginal representation and the mood of introductory sessions at international negotiations. He has also experienced a sense of awkwardness that can continue for some time as new people "arrive at the table" during later sessions of negotiation. Delegates or participants sometimes arrive without knowing or thinking about "who they speak for" and without adequate preparatory knowledge.

Lea MacKenzie spoke to issues affecting gender equality, or more often reinforcing inequalities, during international negotiations. She explained that there appears to be a "western" concept of what "gender equality" is, which is often imposed onto Aboriginal participants by government officials. This notion also affects the selection process of delegates. Participants stated from their experiences the idea representation on delegations is two women, one experienced, one a youth, rather than a man and woman. She noted that increased understanding of Aboriginal representaton, effectivity, and accountability is essential to overcome this bias.

University of Saskatchewan Professor of Education, Marie Battiste, a member of the Board of Governors at Canada's International

Development Research Centre, has expressed similar concerns. Battiste (who was unable to attend the session because of IDRC commitments in Latin America), noted that Canada is neither maximizing nor systematically enhancing the capacity of Aboriginal Canadians to participate in international negotiations and agreements. She recommended that increased co-ordination is necessary within and between state and societal organizations to ensure greater continuity in these endeavours. Finally, she wrote that women are often further marginalized throughout negotiations, discussions, and debates, thereby increasing the turnover of female participants and reducing continuity in planning and preparatory work for international initiatives.

Professor Henderson provided an example of an inclusive method utilized by Professor Janice Gross Stein from the University of Toronto, the Chair of the Ministerial Advisory Board for former Canadian Foreign Minister Lloyd Axworthy. Professor Gross Stein instituted a talking circle method of dialogue to help ensure that "long-winded boardroom behaviour" was curtailed and that all members of the Board were given opportunities to speak on contemporary international issues.

Dr. Harity then raised a series of questions and contributed a number of insights relating to these subjects. He pondered: does the Canadian government sign international agreements and treaties, only to drag its feet in implementation? If so, why? He suggested that an important place to start might be with attitudes within bureaucracies. First, on issues relating to government positions, negotiators often try to craft positions that reinforce themes of continuity, working to ensure that "we don't have to change much." Second, he noted that government officials often attempt to negotiate policy positions that can be implemented. Dr. Herity explained that in his experience, Canadian delegations working in areas of Biodiversity are generally mindful "of what we can do at the end of the day."

Some of the underlying themes of these two points became the focus of discussion. Participants agreed it is sometimes difficult making progress within bureaucracies, as change is often seen as disruptive and even costly. As well, it was suggested that foreign governments

occasionally lack an "ethic of implementation," thereby broadening parameters of negotiation at international conferences, but to little consequence after agreements have been signed. This is called the issue of "global ethics".

Dr. Herity then asked about the place and practicality of talking circles. Professor Henderson suggested that this method of dialogue is most effective in small groups, perhaps up to 20 people. He added that a former president of the University of Saskatchewan drew on talking circles, thereby allowing ideas to be exchanged without feeling obliged to respond to specific individuals or ideas.

Lea Mackinzie explain her efforts of working with International Indigenous Women's Forum, in consultation with the Assembly of First Nations, to foster greater international co-operation and collaboration among Aboriginal women. She affirmed a key component is to overcoming "elements of mistrust" between Aboriginal peoples and Canada and maintaining the trust earned. She noted the consultation process presented by Herity describing the Biodiversity Convention, especially "8(j)," seemed quite respectful, especially when compared to other recent advisory initiatives launched by Heritage Canada relating to preparatory meetings for the World Conference Against Racism and other international meetings. Foundational knowledge is often lacking among Aboriginal representatives, and others, because of poor planning and co-ordination, simplistic understandings of complex international issues, (occasionally among government officials) and weak or ineffective communications among delegates.

Participants noted that a lack of continuity within the Aboriginal community speaks to the under-development of mechanisms for training and grooming participants. They recommended that scholarships and mentoring opportunities be established to build capacity and reflect upon and share lessons learned from international initiatives. Further, they suggested that to date, requests to "move down this path" have not been received warmly by the government. They expressed concern about attempts to "take advantage" of inexperienced members of Canadian delegations and noted that experienced people are not always invited back to participate in other initiatives. As well, apparently leaders within

Aboriginal peoples of Canada are sometimes skeptical about committing valuable human resources to international initiatives. Increased communication with Aboriginal peoples about the importance of international initiatives would help to reduce this skepticism.

The participants agreed that within the broader Canadian population and also within other minority communities within this country, a "myth of privilege" is ubiquitous. This myth assumes that Aboriginal peoples have access to special benefits out of a sense of white guilt, rather than Aboriginal and treaty rights. MacKenzie suggested that increased efforts are warranted to ensure that international initiatives undertaken by Aboriginal peoples of Canada do not simply reinforce this dangerous myth.

Wilton Littlechild, a practicing Cree attorney and a former parliamentarian, is currently a leading Canadian negotiator for the proposed American Declaration on the Rights of Indigenous Peoples, which is being addressed through the Organization of American States, contributed his experience and valuable recommendation by phone. Aboriginal people involved in foreign affair considered Littlechild one of the best and most effective models of international Indigenous statesman.

Littlechild identified a number of factors that stretch already over-taxed human resources from Aboriginal peoples and therefore affect performance during international talks. He noted that "burn-out" is a factor that minimizes continuity and success among Aboriginal Canadians serving on Canadian delegations. He explained that success simply brings with it more work and increased expectations. He recommended strengthening capacity among Aboriginal peoples to meet the increasing demands and opportunities in international affairs; he reinforced that greater co-operation and co-ordination are essential to counter burn-out. As well, he recommended encouraging networking and mentoring initiatives among Aboriginal delegates and peers. He added that there should be two or three gatherings a year for Aboriginal delegates to share their experiences, build continuity, and offer mutual support. These meetings could also allow for common values to be

expressed, respect and trust to be enhanced, and competencies to be recognized.

Like other participants, Littlechild expressed feelings of occasional apprehension about working in areas that reach beyond experience and expertise; this apprehension reinforced the value of training and the compilation of lessons learned in the proposed Secretariat. He also spoke about an ethic of "aggressive exclusion" in which some Aboriginal delegates are shunned within Canadian delegations. He suggested that this is a manifestation of domestic tensions. Littlechild added that occasionally there appears to be "manipulation" of Aboriginal delegates, as government officials and other Canadian delegates, sometimes encourage a "tourist complex" so that Aboriginal delegates can be lured away from talks during key stages of international negotiations.

The participants then discussed dynamics involved in creating and sustaining delegations. They suggested that mentors and young Aboriginal leaders should be included within delegations to ensure that experience and insights are transferred and trust established; "this is part of investing in youth." For instance, Jaime Koebel, a Métis woman from Northern Alberta, who is president of the Youth at Indian Friendship Centres and a member of the Advisory Committee for the World Conference Against Racism, was able to gain invaluable knowledge by working with an Aboriginal mentor during international negotiations.

Participants recommended:

- DFAIT and other departments should establish teams, thereby ensuring that Aboriginal delegates can co-operate and share international experiences.

- Teams should consist of young and experienced delegates while ensuring that both men and women have substantive opportunities to participate.

- A steering committee should be established to examine this issue in greater detail.

- parAn on-line "portal" could be used to help facilitate this teambuilding initiative, as well as other components of the Secretariat and education centres.

- An Aboriginal Summit should be held to address a broad range of issues in Canada, including international initiatives and opportunities.

ONGOING INDIGENOUS INTERNATIONAL FORA

Director Herity asked about the existence of a list of past and ongoing international forums or meetings in which Canadian Aboriginal representatives are involved. Professor Henderson responded that some were known, but that even this basic information is not easily accessible. A sampling from all participants included:

- United Nations General Assembly, especially relating to the International Decade for Indigenous Peoples;

- the UN Permanent Forum on Indigenous People (this entity was approved last year, but given no budgetary support. As a result Professor Russell Barsh at New York University runs an informal Indigenous Secretariat from campus);

- United Nations Development Programme mission and programs

- Working Group on Indigenous Populations

ltPrinciples of Guidelines for the Protection of Indigenous Heritage

- Governmental Working Group on Draft Declaration of Indigenous Rights
- World Conference Against Racism;
- t360World Conference on Rights of the Child;
- Canadian Committee to Review Draft Declaration for the Vienna Convention;
- International Labour Organization, especially relating to convention 169;
- UNESCO, in areas relating to cultural pluralism, protection of heritage, cultural diversitry and intercultural dialogue, and Indigenous literacy;
- UNESCO's World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) of *World Heritage Convention*
- *Biodiversity Convention*;
- abWorld Intellectual Property Organization (WIPO) fact-finding missions and report on the intellectual property (IP) needs and expectations of holders of traditional knowledge (TK).
- Organization of American States, drafting of the American Declaration on the Rights of Indigenous Peoples (J. Wilton Littlechild, Q.C. leads Indigenous efforts)
- OAS Young Americas Business Forum;

- World Trade Organization, especially relating to TRIPS;
- Food and Agriculture Organization, based in Rome, (Canadian efforts include Stephen Augustine and Ted Moses);
- Bejing Plus Five Process;
- International Indigenous Women's Forum.
- International Instrument on Cultural Diversity

Herity noted that there are obviously more than a dozen continuing initiatives in which Aboriginal Canadians are involved and that a Secretariat would not only support training and mentoring but also serve to identify inter-relations among these initiatives.He asked if such a Secretariat might serve under the authority of an Aboriginal Ambassador, perhaps supported by the government and organizations such as the Assembly of First Nations.

Drawing on his experience, Henderson noted that former Foreign Minister Axworthy attempted to created and fund an Aboriginal Ambassador with AFN and to ensure that fifteen percent of all DFAIT appointments were Aboriginal, but that the Minister could not meet that number because of a lack of capacity. Equally troubling was that there was no systematic mechanism or approach to train individuals or increase capacity. The participants added that a Secretariat could provide a hub to which all Aboriginal delegates serving internationally would submit reports, thereby also building a resource library for students and practitioners.

BENEFITS AND INCENTIVES TO UNDERTAKE INTERNATIONAL ACTIVITIES

In order to explore some fundamental elements of the issue, Director Herity posed another foundational question: What are the benefits of or

incentives for Aboriginal peoples to undertake international activities? Almost all participants offered a response. Importantly, several years ago, Aboriginal Elders encouraged young people from Canada's First Nations to "go see and learn about the world" and extend their friendships. As well, it is recognized that international activities help to enhance the lives, and enrich sensibilities, of all Canadians, especially by ensuring that Canadian domestic laws relating to Aboriginal peoples are consistent with Canada's international positions and priorities. As well, international norms can sometimes serve to prod Ottawa into action on Aboriginal issues. The *Loveless* legal case in the Human Rights Committee was offered as evidence; because of a decision issued from the United Nations, section 12(b) of the *Indian Act* was altered and gender equality was asserted in s. 35 of *the Constitution Act, 1982*. This is a crucial example of the nexus between local and global communities, the importance of international engagement, and the increasing prominence of global norms relating to Indigenous communities and others.

The participants stressed that Aboriginal leadership in Canada means that we must help all Indigenous peoples. We have benefited from our long struggles, and should share our capacities and experience for the betterment of all Indigenous peoples. The Indigenous initiatives in the UNDP as articulated by its draftsperson Russel Barsh illustrate the basic rules of engagement on global issues (see ***Appendix D***). The participants agreed these rules are the best practice model of engagement in the UN system, and they should guide Canadian foreign policy development.

Similarly, the participants agreed that international initiatives undertaken by Aboriginal peoples enrich Canadian foreign policy, by encouraging DFAIT to consider broader visions and alternatives to "Eurocentric" assumptions and positions. As well, participating in "respectful dialogues" on substantive issues—with international experts and peers—remains important for Aboriginal peoples and their scholars; too frequently in Canada, Aboriginal views are still dismissed by career technocrats and lawyers representing Canada. Important perspectives are gained from Aboriginal participating in the international arena that are

needed in the globalization era. Horizons are broadened beyond local venues in Canada. There are also important opportunities within the international realm to speak truthfully about Aboriginal peoples, their poverty and misery in contemporary Canada, and issues affecting their communities. Finally, Aboriginal delegates can gain information from other governments to better understand Canadian actions; other international actors help to separate public relations spin from substantive policy positions.

CREATING ABORIGINAL SECRETARIAT

Lea MacKenzie also suggested that a model might be useful to help explore options for a new Secretariat. She focused on a program for women's training in Australia that supports mentoring and enhancing educational opportunities for women interested in international initiatives. The organization undertakes a number of activities. First, it identifies women who are interested in receiving training. Second, it focuses on both general areas of interest and key types of specialties. Third, it offers a two-week training program in Geneva or the Hague every summer. Fourth, it creates not only experts but a network for various international initiatives. Fifth, it has established an alumni network that works on a "train-the-trainer" model of knowledge-building. Finally, there is increasing interest in transforming this organization into a foundation that might focus on additional issues as well.

Herity asked if most delegates selected from First Nations communities have experience with the policy cycles of the federal government. He suggested that increased knowledge about the formulation and implementation of public policy would help to bolster the voice of Aboriginal Canadians, and others. Implicitly, he reinforced the important educational function of the proposed Secretariat. He added that it is helpful for all international delegates to understand where officials and other policy stakeholders are "coming from" regarding key policy areas. He suggested that most policy change is incremental, as proposals for policy change are often "framed" by an existing policy. Government officials are tasked with defending and implementing

policies, which helps to explain bureaucratic processes that reduce expectations and attempt to balance forces such as economic competitiveness with broader issues of social "balance and fairness."

The participants suggested that the Secretariat could also serve as an "incubation centre for enhancing Aboriginal leadership." They noted that the current generation of Aboriginal leaders stills meets resistance, both locally and globally, but that the next generation will be better positioned to seek and acquire greater control. He explained: "realizing the wrong is easy. Fixing it and changing minds is difficult." Having international experiences, undertaking initiatives, and engaging experts help Aboriginal Canadians to see the world through "new lenses." Internationalization of the Canadian Aboriginal agenda is important for linking and addressing local and global challenges.

The participants urged an Indigenous Secretariat to help track and train Aboriginal Canadians serving on public agencies, boards and commissions. They agreed that at present there is little systematic organization of information relating to Aboriginal participation within international or national initiatives. The participants suggested that an advisory committee could steer the Secretariat; appointments might range from 2-5 years and have relations with the UN Permanent Forum for Indigenous Peoples and its other international initiatives. This institutional reform would be positive and sustainable contribution for the UN Decade of Indigenous Peoples.

Drawing on Lea MacKenzie's proposal to work in "functional" areas, the participants suggested the Secretariat could establish and sustain quote tables" or "chairs" be established for work in key international fields, thereby providing Elders, "Conference Nomads", and young Aboriginal interns an opportunity to work together, share knowledge, establish and sustain expertise in areas that are important for Aboriginal peoples as well as other communities and citizens. They recommended that an Aboriginal Secretariat might be placed outside DFAIT or Heritage Canada, and established under the Office of the Governor General as a *national* institution of Aboriginal peoples. This would decolonize the Governor General positition and be consistent with the treaties with Aboriginal peoples.

The participants explained that such a Secretariat would help to co-ordinate report writing, speakers and training, thereby enhancing accountability and organization. It was seen as an institutional mechanism that can help establish and reinforce themes of continuity.

40INDIGENOUS DIPOMATIC TRAINING NEEDS

Upon reflecting on these recommendations and earlier statements, the participants recommended that the federal government, in cooperation with experienced Aboriginal participants and centres, establish a training centre or process for new Aboriginal appointments or participants in foreign affairs. They suggested that this not be a project of DFAIT but assigned to either the Native Law Centre or UBC Center for International Indigenous Affairs at UBC College of Law. Both DFAIT and experienced Aboriginal participants should conduct the work at the training center. The training needs to work with Indigenous Humanities and the recommended Biodiversity Science Centre.

DEVELOPMENT OF ABORIGINAL COMMUNICATION STRATEGY

The participants affirmed that Canada often appears "schizophrenic" on Indigenous issues during international negotiations and during Indigenous initiatives. They reviewed Canadian activity at the UN that indicates a growing preoccupation with controlling programs involving Indigenous peoples. Canada acknowledges the desire of Indigenous people to exercise control over their own lives and how they are governed, supporting the principle of self-determination with the framework of existing states, but has not implemented this principle in foreign policy-making. Canada sometimes supports certain progressive international positions and policies when they have no chance of passing, but becomes less liberal or progressive when it appears that controversial initiatives may pass, thereby placing new demands on Canada. Canada activities reveal a need for communication strategy affecting Indigenous peoples, in Canada and around the world.

An example was in the creation of the UN Year of Indigenous People and the International Decade of Indigenous Peoples. Canada insisted on replacing Colombia as the coordinator and main sponsor of

the International year. It was also co-sponsor of the International decade. On a operational level in Canada or the UN, Canada has done little to support this initiative, especially in communicating it to Canadians or highlighting this initiative via the Canadian Broadcasting Corporation or the Canadian press. Canadian diplomats in the UN praised the Indigenous representatives as an inspiration to the process with their ideas and advice and reiterated Canada's goal of seeking Aboriginal peoples become partners in the governance and development of Canada. Canada did not strengthen the constitutional voice of Aboriginal peoples or ensure their meaningful participation in relevant UN programes and activities. Canada was not helpful in lobbying for funding for either the UN year or decade or in advancing any coherent agenda within Canada.

Wanda McCaslin recommended that an Aboriginal Communications Strategy be developed within the mandate of a new Aboriginal Secretariat. Such a strategy would allow Aboriginal peoples to enhance communication and understanding within Canada, offer programming for other Indigenous peoples throughout the world, and enhance contact between Aboriginal peoples and Ottawa. She reiterated that the federal government would appear to have a vital interest in enhancing communication among First Nations and with the federal government; the government "is not hearing indigenous voices and this is a dangerous situation for Canada."

Dr. Harity agreed that a communication strategy and structure was worth pursuing. He related relevant experience regarding an Aboriginal "caucus" he helped organize to assist in addressing aspects of the Biodiversity Convention. On advice from Aboriginal representatives, and with a willingness to commit some resources, he encouraged an Aboriginal caucus to organize a competition and select an Aboriginal representative to serve in the Director's Office. This example may prove helpful for the proposed Aboriginal Secretariat. Systematically preparing representatives from Aboriginal peoples for international work, especially to help bolster capacity and to encourage continuity, would be beneficial; continuity allows for work to be organized appropriately and knowledge to be gained systematically. As well, opportunities for such preparation would allow for Aboriginal peoples to be engaged in various

international issues. Training opportunities would encourage "periodic gatherings" and regional workshops where governmental and non-governmental representatives could co-operate and communicate. As well Dr. Herity suggested that systematic preparation would help Aboriginal participants, and others, address key issues relating to representation.

Lea MacKenzie recommended that functional areas of interest be identified and established by various Aboriginal organizations in Canada, thereby helping to reduce competition for scarce resources and developing relevant areas of expertise to enhance both local and global initiatives.

INDIGENOUS HUMANITIES

Professor Len Findlay, Director of the Humanities Research Unit at the University of Saskatchewan, and fomer Vice President External Communications of Humanties and Social Science Federation of Canada explained international efforts to affirm the Indigenous Humanities within national and international organizations and institutes. He focused on the relevance of the "Indigenous Humanities" within contemporary Canadian institutions of learning, international institutes in civil society, and international policy making. He highlighted an additional rationale for Aboriginal peoples to undertake international activities: providing lessons learned by Aboriginal peoples in Canada to other Indigenous peoples around the world. The "Indigenous Humanities" were described as a movement capable of enhancing core values such as parity, freedom, justice, and human rights. Its fundamental premise is that at one time the entire human realm was indigenous, and scholarship must explore the movement from indigenous to colonizer, imperial, modern, postmodern and postcolonial movements. Scholarship should always "indigenize; critically historicize and digitize". This methodology not only allows others to learn from the Canadian experience, but also offers greater legitimacy for Aboriginal peoples in Canada and beyond.

As a new methodological approach to help explain historic and contemporary affairs in Canada and beyond, the "Indigenous Humanities" draw upon traditional humanist knowledge and skills to

"decolonize" contemporary academic disciplines, universities, and related institutions of learning, as well as the thinking of academics who espouse biased versions of freedom, democracy, and other key concepts relating to governance. Professor Findlay highlighted both "plausible and implausible" interpretations of this phrase before reflecting that the "Humanities, whether in ancient Greece and Rome or later, were passports to domestic prestige and elite cosmopolitanism." He noted that "a nation's self understanding is always international as well as domestic." Findlay added that with greater understanding, co-ordination, and initiative from communities and governments, "former white settler colonies like Canada can work to export the protocols of respect and collaboration that produce justice and lead to the re-valuing and protection internationally of Indigenous knowledge and heritage."

Professor Findlay urged that the unversity and academic disciplines and public policy interfaces must continue to

- learn more about Indigenous peoples view of the land and its ecologies;
- s74learn more about the oral transmission and mediation of traumatic histories, and the potential of new media to expose the limitations and brutal exclusions of modernity;
- learn more about the role of language in identity formation from those in danger of losing both language and identity;
- learn more about 'new' pedagogies via Indigenous talking circles and the protocols they favour;

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- learn more about justice from Indigenous law and sentencing circles;

- learn more fully how the Indigenous other is not a liability but an invaluable and generous resource for understanding and achieving social justice and economic sustainability;

- tb vlearn more about the continuing saga of the UN and member-states denial of Indigneous peoples' rights, peopleshood, and humanity in the Human Rights Covenants, the battle of the "s";

- learn how to use, across all humanities disciplines, the master/strategic text of the hour, the *Report of the Royal Commission on Aboriginal Peoples*, where Indigeneity is figured and documented as humane interdisciplinarity;

- learn how to repeat and use the cry that can now be heard in at least some locations, a cry always at least tripartite: always historicize! critically digitize! eagerly indigenize! So that the emboldened liberal arts can be effectively rhizomic, arboreal, sustainable, using the internet, the liberty tree, the seasonal return and responsible harvest of the salmon, the sweetgrass, and the caribou. It is cry and a socio-academic agenda that will contine to assist us to *encounter* Canada not as *terra nullius* but as patterns of movement underway and at long last effectively anti-colonial.

The lack of Indigenous Humanities is evident in the fact at the recent International Studies Association (ISA) Annual Convention in Chicago discussion to create Canadian regional section within the ISA. This discussion did not include any discussion creating an Indigenous section of ISA or its role in the regional section. The participants at the roundtable encouraged an indigenous sector to facilitate networking and would be an important step in Indigenous humanity, diplomacy, and policy making. They agreed that Aboriginal peoples should be part of the Canadian regional section. Further they agreed Indigenous scholars are lacking in Annual Academic Roundtable and Graduate student seminars.

The participants then spoke about the obvious linkages between the "Indigenous Humanities" and Indigenous diplomacy. By training, enhancing preparatory co-operation, and working collaboratively under a common Secretariat, Aboriginal peoples could not only build their own international capacity and enhance Canadian public policy, but also offer valuable "best practices" to other Indigenous peoples, organizations, and governments around the world. Canada's struggles and success relating to its Aboriginal peoples could help to inform and inspire others regarding practical and peaceful opportunities for enhancing greater inclusion of and respect for Indigenous differences in globalization. Canada could provide a model for mutual transformative processes that are in the enlightened national interests of international actors and organizations.

PRESERVATION OF ABORIGINAL LANGUAGES, HERITAGES AND KNOWLEDGE

Focusing the discussion on a series of related issues, Professor Battiste, the co-author of *Protecting Indigenous Heritage and Knowledge*, and a Governor of IDRC, offered by writing a number of recommendations relating to the preservation of Aboriginal languages, knowledge and sacred ecological areas:

- Canada should work to protect Indigenous languages as well as cultural knowledge.

- Heritage Canada and Canada's National Parks should collaborate with Aboriginal peoples to ensure protection of sacred sites, thereby helping to preserve sources of Aboriginal language and knowledge as well as traditional ecological integrity of these areas in Canada.

- isttabAboriginal Knowledge and Education Centres should be created, which would be consistent with RCAP and would provide opportunities for Aboriginal Canadians on themes of

international diplomacy, traditional ecological knowledge and National Parks.

- ❖ National Parks and Indian Reserves be reconceived as "living laboratories" which would be conserved. She added that Canada should construct an UNESCO Bio-sphere

- ❖ National Research Chairs in areas relating to Biological diversity and traditional Aboriginal heritage and knowledge be established.

DESIGNATE ABORIGINAL ELDERS AND SCHOLARS AS NATIONAL HERITAGE PEOPLE

Affirming and expanding on this point, the participants recommended that DFAIT and other government departments designate Aboriginal Elders and scholars as "national resource people" who are to be respected and appreciated for their experience, but also engaged to share their knowledge. This recommendation is based on a Japanese model of honouring "National Heritage People." This distinguished title provides key individuals within Japan with modest support from Tokyo, but also provides these Elders with "charity status" which allows them to raise money, thereby generating and sharing rare knowledge. Essentially, this mechanism recognizes the importance of Elders to Aboriginal peoples and institutionalizing a process directly related to Aboriginal and treaty rights that allows for mentoring and internship training. In Canada, paradoxically, Aboriginal Elders who are considered to be experts in areas like Biodiversity are sometimes on federal assistance programs aimed at simply meeting basic needs.

Dr. Herity mentioned that Indigenous Elders in various parts of the world are currently collecting and storing plant seeds to preserve bio-diversity through traditional means, thereby reinforcing the importance of issues relating to research ethics and Elders within the realm of Biodiversity

ABORIGINAL SCIENCE CENTRE

1024 The participants concurred that "scholarships" should be instituted to provide opportunities for the pooling of expertise and the enhancement of prestige for Aboriginal experts within Canada. They lamented that under current plans for the Canada Research Chairs, which have recently been created, there are few Chairs for Aboriginal Canadians, especially those with expertise in areas such as Biodiversity and traditional ecological knowledge. They recommended that a Aboriginal Science Centre, based on the model of the Native Law Centre of Canada, be established. They would like to see graduate students encouraged to work in these and related areas of endeavour.

RESEARCH IN SUSTAINABLE PEOPLES.

The roundtable discussion concluded by returning to an earlier theme of "sustainable communities; sustainable peoples" which were seen as possible, if general, models for moving forward on issues of Biodiversity and resource management (i.e., fisheries, organic agriculture, lumber, mining and energy) within and beyond Canada. Key areas of focus would relate to stability and security, poverty alleviation, enhanced efficacy and esteem, and economic growth. An emphasis would also be placed on "fair trade" between communities and countries.

As well, these "model" communities would have electronic network access to other communities in Canada and around the world, thereby raising awareness and offering alternative models in development and sustainable growth. These and other ideas will be addressed in Johannesburg in September 2002.

Appendix A

Excerpt from THE CROWN'S DUTY TO CONSULT: THE CURRENT LEGAL LANDSCAPE

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Patrick Macklem, Professor of Law, University of Toronto

The Source of the Duty

The Crown's constitutional duty to consult with aboriginal people is often explained as a consequence of the fiduciary relationship that exists between aboriginal people and the Crown. And this is no doubt the case. Courts have held that, because of its status as fiduciary, the Crown must justify any infringements of aboriginal and treaty rights recognized by s. 35(1) of the *Constitution* Act, 1982. And the judiciary has conceptualized the Crown's duty to consult in the event of an infringement of an aboriginal or treaty right as one aspect of the more general fiduciary obligation on the Crown to justify infringements of s. 35(1) rights. But to regard the fiduciary relationship existing between the Crown and aboriginal people as the source of the Crown's duty to consult in the event of an infringement of an aboriginal or treaty right may miss the mark. This is because the judiciary tends to regard the reason why the Crown is under a duty to consult in particular cases as somehow connected to the nature and purpose of the specific aboriginal right in question. And it is becoming increasingly apparent that s. 35(1) recognizes and affirms different types of rights.

Specifically, s. 35(1) protects three, and perhaps four, relatively distinct sets of aboriginal rights from governmental interference. The first set of rights relates to aboriginal cultural difference. It includes rights to engage in practices, customs and traditions integral to the distinctive culture of the First Nation claiming the right. Such practices, customs and traditions must have a degree of continuity with activities that the First Nation engaged in prior to contact with European settlers. The second set of rights relates to aboriginal territorial interests. It

includes rights associated with aboriginal title. Aboriginal title is held communally and encompasses the right to exclusive use and occupation of the surface and subsurface of ancestral territories. It authorizes a range of aboriginal activities on the land, which need not be aspects of aboriginal practices, customs and traditions integral to distinctive aboriginal cultures. The third set of rights are treaty rights. Treaty rights typically protect interests associated with the first two categories of rights, namely, cultural and territorial interests, but they do so in a manner that is predicated on successful negotiations with the Crown. The fourth set of rights, which the judiciary has yet to explicitly regard as recognized and affirmed by s. 35 but which may well receive constitutional protection in the future, includes aboriginal rights of self-government.

The judiciary has made it clear that the Crown must consult with aboriginal people when it seeks to interfere with rights associated with aboriginal cultural difference. In *R* v. *Sparrow*, at issue was the constitutionality of federal fishing regulations imposing a permit requirement and prohibiting certain methods of fishing. The Musqueam First Nation, located in British Columbia, had fished since ancient times in an area of the Fraser River estuary known as Canoe Passage. According to anthropological evidence at trial, salmon is not only an important source of food for the Musqueam but also plays a central role in Musqueam cultural identity. The Musqueam argued that the federal fishing requirements interfered with their aboriginal fishing rights and, as a result of s. 35(1), were invalid. In its landmark decision, the Court found for the Musqueam nation, and held that aboriginal rights recognized and affirmed by s. 35(1) include practices that form an "integal part" of an aboriginal community's "distinctive culture." If such rights "existed" as of 1982, that is, if such rights had not been extinguished" by state action prior to 1982, then any law that unduly interferes with their exercise must meet relatively strict justificatory requirements. One such requirement, according to the Court, is that the Crown consult with aboriginal people prior to introducing natural resource conservation measures that interfere with the exercise of an aboriginal right to fish. Specifically, the Court held that the

constitutionality of fish conservation regulations that interfere with the exercise of an aboriginal right to fish would depend in part "on whether the Aboriginal group in question has been consulted with respect to the conservation measures being implemented."

The judiciary has also made it clear that the Crown must consult with aboriginal people when it seeks to interfere with rights associated with aboriginal territorial interests. In *Delgamuukw v. British Columbia*, in which hereditary chiefs of the Gitksan and We'suwet'en nations claimed aboriginal title to 58,000 square kilometres of the interior of British Columbia, the Supreme Court of Canada held that aboriginal title is protected in its full form by s. 35. In the event of an interference with rights associated with aboriginal title, according to the Court, "[t]here is always a duty of consultation" that forms part of the Court's inquiry into "whether the infringement of Aboriginal title is justified."

Finally, the judiciary has indirectly indicated that the Crown may be under a duty to consult with aboriginal people in the event of an infringement of a treaty right recognized and affirmed by s. 35. In R v. *Badger*, at issue was whether the Treaty 8 right to hunt provided a defence to a charge under Alberta's *Wildlife Act*, which prohibited hunting out-of-sesson and hunting without a license. The Court held that Treaty 8 protected hunting for food on private property that was not put to a "'visible, incompatible use," and that the right to hunt was a treaty right within the meaning of s. 35(1) of the *Constitution Act*. The Court stated that "a treaty represents an exchange of solemn promises .... [and] an agreement whose nature is sacred." It noted that "aboriginal and treaty rights differ in both origin and structure." It reiterated that treaties ought to be interpreted in "a manner which maintains the integrity of the Crown" and that ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the Indians." The Court further held that treaty rights can be unilaterally abridged by the Crown so long as the law in question meets justificatory standards similar to those that operate in relation to laws that interfere with the exercise of aboriginal rights, but it suggested that given the fact that a treaty constitutes "a solemn agreement, ... it is equally if not more

important to justify *prima facie* infringements of treaty rights." Accordingly, the Crown likely is under a duty to consult in the event of an infringement of a treaty right recognized and affirmed by s. 35.

For present purposes, what is interesting about these cases is not that each holds the Crown to a duty to consult, but that each suggests that the reason for the duty is somehow connected to the nature and purpose of the specific right in issue. In *Sparrow*, for example, the Court held that the Crown's duty to consult with aboriginal people regarding the introduction of natural resource conservation measures that would interfere with aboriginal rights associated with cultural difference, such as aboriginal fishing rights, is a function of the fact that aboriginal people have "a history of conservation consciousness." The aboriginal peoples, with their history of conservation consciousness and interdependence with natural resources would surely be expected, at the least, to be informed regarding the determination of an appropriate scheme for the regulation of fisheries."

In *Delgamuukw*, the Crown's duty to consult was seen as flowing from the fact that aboriginal title "encompasses within it a right to choose to what ends a piece of land can be put." While the Court has not yet explicitly ruled on the relationship between the duty to consult and treaty rights, the Court in *Badger* emphasized important differences between aboriginal and treaty rights, and it would not be unreasonable to suggest that at least part of the reason the Crown ought to be under a duty to consult in the event of an infringement of a treaty right is because "'treaty rights are the result of mutual agreement."

Complicating the matter further is the fact that there are often statutory consultation and participation requirements when the Crown seeks to engage in or authorize activity that may adversely affect the interests of aboriginal people, including interests associated with aboriginal and treaty rights recognized and affirmed by s. 35. Prime examples are notice, consultation and participation requirements contained in environmental assessment legislation. To the extent they specifically require aboriginal notice, consultation or participation over and above what is required of the Crown in relation to the non-aboriginal public, such statutory requirements constitute legislative recognition of

the fact that the Crown is in a fiduciary relationship with aboriginal peoples. As discussed in a subsequent section of this paper, depending on the relevant language, courts have tended to interpret such requirements in a more expansive manner than what the duty to consult requires in the absence of a statutory regime.

Understanding the source of the Crown's duty to consult to be the fiduciary relationship existing between the Crown and aboriginal peoples does not affect its capacity to facilitate negotiated, as opposed to litigated, settlements. But locating the duty solely as an aspect of the justification inquiry to be undertaken in the event of an infringement of an aboriginal or treaty right underestimates its potential to prevent infringements of such rights by creating incentives on the parties to resolve their disputes without resorting to litigation. Comprehending the duty simply as an aspect of the justification inquiry creates an incentive on the Crown to engage in consultations in a manner that justifies its infringement. In contrast, locating the source of the duty in the right at stake may lead the Crown to a better understanding of the nature of the aboriginal interests at stake, and instill in governmental actors the idea that the reason why consultation is required is not to justify Crown interference with aboriginal or treaty rights but instead because the Crown is obligated to protect such rights.

Appendix B

The following list of common law demands for constitutionally acceptable consultation with Aboriginal Peoples is taken directly from HMG Braker and B Freedman, "Consultation with First Nations Prior to Major Natural Resources Development and Other Projects" presented at "Environmental Law and Canada's First Nations" Pacific Business and Law Institute, Vancouver, November 18 and 19, 1999.

1. There is always a duty of consultation *(Delgamuukw)*;

2. Consultation must be in good faith, with the intention of substantially addressing the concerns of aboriginal people whose lands are at issue *(Delgamuukw)*;

3. In some cases, a decision may require the consent of a First Nation, particularly where provinces enact hunting and fishing regulations in relation to lands to which title is proven *(Delgamuukw)*;

4. Consultation arises where the Crown is implementing conservation measures (Sparrow), and it is also required where any Crown measure, such as permit and application approvals, may infringe aboriginal rights or title *(Delgamuukw, Cheslatta Carrier Nation v. British Columbia (Environmental Assessment Act, Project Assessment Director, Halfway River First Nation v. British Columbia (Ministry of Forests), [1997] 4 C.N.L.R. 45 (B.S.C.C.)* and *Halfway River First Nation v. B.C.* (August 12,1999, *CA023526, CA023538 (C.A.)*;

The Crown must fully inform itself of the effect of a law or regulation on a First Nation, which includes getting the Nation's views concerning practices, customs or traditions giving rise to the aboriginal right or title *(R. v. Jack* (1995), *16* B.C.L.R. (3d) *226 (C.A.) Halfway)*;

6. Consultation amounts to more than simply making a few telephone calls or sending a few letters or faxes; the Crown cannot say that it has consulted by referring to how many letters or phone calls it has made, as the consultation must be meaningful *Halfway)* and it must allow a First Nation to make a reasonable assessment of the effects of what the Crown is doing, including giving sufficient data to the First Nation *(Cheslatta);*

7. Depending on the circumstances, the duty to consult may imply rules of procedural fairness and require that a party entitled to fairness is entitled to know the case it has to meet and be able to respond *(Union of Nova Scotia Indians v. Maritimes and Northeast Pipeline Management Ltd.,* [1999] F.C.J. No. *1546 (C.A.));*

8. Consultation may be required early in the process and not simply where a decision is about to be made or only where issues of justification of infringement arise *(Halfway);*

It is up to the Crown, and not to First Nations, to initiate consultation *(Sampson);*

10. There is an obligation on First Nations to participate in consultation as well; it is a two-way street *(Cheslatta;* Ryan *v. Fort St. James Forest District (District Manager)* (1944), 40 B.C.A.C. 91));

11. The fact that a project may be time sensitive does not relieve the Crown of its duty to consult - and duty may arise even where a project is near completion *(Cheslatta);* owever, a true emergency may be one factor of terms of determining the adequacy or reasonableness of consultation and whether an infringement can be justified (R. v. Nikal (1996), 133 D.L.R. (4th) 658 (S.C.C.));

12. In order for consultation to be meaningful, the Crown must take the views of First Nations seriously, including the aboriginal perspective, and it cannot simply ignore such views or make decisions which amount

to rubber-stamp approval (R. *v. Noel,* [1995] 4 C.N.L.R. 78 (N.W.T.T.C.)),

13. The duty to consult arises, in addition to rights and title, in respect of agreements between the Crown and First Nations, as well as to treaties (R. *v. Marshall, [1999]* S. C.J. No. 66 (Nov 17,1999) (Marshall No. 2)), *(Nunavut Tunngavik Inc. v. Canada (Minister of Fisheries and Oceans), [199714* C.N.L.R. 193 (F.C.T.D.))- and where the Crown has chosen to enter into treaty negotiations, it must negotiate and (and presumably consult where required) in good faith (Gitanyow *First Nation v. Canada,* [1999] 3 C.N.L.R. 89 (B.C.S.C.)) and

14. Consultation is required where a decision has affected, or may affect, the rights and title of a First Nation *Halfway, Kitkatla Band v. British Columbia (Ministry of Forests),* [1999] 2 C.N.L.R. 170 (B.C.C.A.))

grid

Appendix C

The Indigenous Humanities and Indigenous Internationalism

Len Findlay, D. Phil.

A descriptive and performative look at this new disciplinary formation, nourished under the guidance of Sakej Henderson and Marie Battiste and connected to a number of international aboriginal networks we are currently strengthening and extending. I want to give a sense of how traditional humanist knowledge and skills can be used to decolonize these foundational disciplines, the institutions which house them, and the scholars and teachers who profess them.

What's in a name? A double identity both plausible and implausible.

Plausible: in that the humane disciplines--philosophy, history, theology, languages and literatures--seem to bring together core competencies of all societies and cultures. By this token, the Indigenous Humanities operate to confirm universals that characterize our species: our ability to communicate through language, to mark our place and progress across time and space, and locate ourselves reflectively and spiritually in relation to each other, to the world we all share, and to the forces that lie beyond our understanding or control.

Implausible: in that the humane disciplines, understood as originating in ancient Greece and emphatically Eurocentric, are synonymous with ethnic and class elitism and have needed to create versions of the barbarian (anyone who did not speak Greek) in order to authenticate themselves. By this token--and its exclusionary or diffusionist, pseudo civilizing mission--the Indigenous Humanities are a contradiction in terms. The primitive or uncivilized could not plausibly lay claim to such knowledge in earlier centuries; they can only do so

now via imitation and assimilation because there is no such thing as Indigenous knowledge.

Reading against the grain of Eurocentric pretension, or, using the master's tools to dismantle the master's house: one might point to the fact that humanist theories of freedom and democracy were developed in a slave-owning, sexist, and deeply racist (xenophobic) society, but that history, that limitation of the universally human to those considered by elites to be fully or really human, has been part of the "great forgetting" that preserves European illusions of superiority and justice. This great forgetting is replayed in such later statements of universal rights and freedoms as are found in the US Declaration of Independence, the French Revolutionary Declaration of the Rights of Man and of the Citizen, and the UN Declaration of Universal Human Rights that has required an Indigenous counterpoint or addendum.

Note that the nation's self-understanding is always international as well as domestic, aligned with entity and ownership but also with process and negotiated relationship; the national always implicates the international and multinational, and in countries like Canada internally with its First Nations as well as internationally with its 'peers' and their first peoples. The Humanities, whether in ancient Greece and Rome or later, were passports to domestic prestige and elite cosmopolitanism; the claim to universality is always transnational (as well as at least covertly nationalistic) and it will always create its dominated or deficient other.

This is especially clear in the rebirth of the Humanities in the Renaissance in early modern Europe: the rediscovery of the ancient languages, disciplines, and texts occurred virtually simultaneously with voyages of 'discovery' that were the prelude to modern colonialism. The golden age of renaissance humanism was, and not at all coincidentally, the first heyday of modern Euro-colonialism.

Decolonizing is possible and necessary for all the humanities disciplines, and that is occurring via the double gesture of reinterpretation and extension, recognizing the inaugural and ongoing violence of such knowledge, and recognizing that its powers are far more broadly shared than Eurocentrism has ever willingly allowed.

Disciplinary and institutional histories and critical reflection

yield everywhere in the colonized world the conclusion that the traditional humanities were instrumental in the processes of dispossession, genocide, and self-legitimation that we know as colonialism; the revisionary component in the Indigenous Humanities is dedicated to yielding and disseminating that conclusion over and over again in the broad project of public re-education that should in turn yield justice for Indigenous peoples in Canada and the world over.

Such work can be pursued via the examples of the textual and contextual humanities (i.e. all of them), tracing, for instance, the shift from classical philology through comparative philology to (ethno)linguistics, an internationalizing project that began by confining orality to Homer, then privileged Euro-texuality within the Indo-European 'family' of languages where modernity and colonial power were claimed to lie with those who spoke English, French, Spanish, Portugese, Dutch, and German, and then becoming a full-blown science of living languages one of whose first tasks was to patronize, exoticize, and eradicate Indigenous languages because language is so important to individual and collective identity. Demoralization facilitates dispossession. A "stolen life" seems not worth living.

Such work can also be pursued as Treaty Humanism, returning to the treaty process to understand that for the colonizer betraying the terms and conditions of treaties was a well-established habit at home before being deemed exportable to newly 'discovered' territories, whereas it was a solemn and sacred undertaking for the Indigenous parties to such treaties. Treaty Humanism is a place for justice to prosper, but only if non-Indigenous scholars will agree to work under the guidance of Indigenous scholars and the communities and nations they represent. Perhaps former white settler colonies like Canada can work to export the protocols of respect and collaboration that produce justice and lead to the revaluing and protection internationally of Indigenous knowledge and heritage. Only then will we all be able to say, "Education is now our buffalo," used respectfully and sustainably for the benefit of all.

-Len Findlay-
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Appendix D

Census Indigenous Draft of Principle of Engaging Indigenous Peoples in Human Development in UNDP

Russel Barsh, Professor of Law, New York University

The UNDP Mission

"Human rights and sustainable human development are interdependent and mutually reinforcing. Development is unsustainable where the rule of law and equity do not exist; where ethnic, religious or sexual discrimination are rampant; where there are restrictions on free speech, free association and the media; or where large numbers of people live in abject and degrading poverty."

Integrating Human Rights with Sustainable Human Development (1998).

UNDP is committed to promoting democratic development, human rights, and the growth of civil society as pillars of sustainable human development—in particular, as key elements of empowerment and development for the poorest of the poor. In meeting these commitments, UNDP will make effective use of its comparative advantages: its global presence in national capitals, the role of UNDP's Resident Representatives as resident coordinators for the UN family, a reputation for neutrality, and extensive experience with participatory development and institution-building. These assets place UNDP in a unique position to bring key actors and stakeholders together; to promote inclusion, dialogue, and consensus building; to help mobilize the specialized expertise and financial resources of other parts of the UN system; to build peace and prevent conflict. Because of this, UNDP also has a unique position of trust and responsibility for all people and communities that are poor, marginalized, and socially excluded.

Focus on Indigenous Peoples

Consistent with its overall mission and priorities, UNDP is particularly committed to improving the effective participation of indigenous peoples in the decisions that affect their communities, their cultures, and their territories. UNDP will invest in initiatives by governments and indigenous peoples to develop trust, explore working relationships, and build strong local and national institutions for cooperation and collaboration in the pursuit of culturally appropriate and sustainable human development.

UNDP's focus on indigenous peoples is cross-sectoral, and will be implemented through activities and projects within the countries, and the UNDP priority areas, where there is a high likelihood of making a direct and positive impact on indigenous peoples: democratic governance, poverty reduction, crisis prevention, and the environment.

UNDP's basic commitment is to work to include indigenous peoples at all levels of relevant decision making, beginning with human development policy, and to promote indigenous peoples' opportunities and capacity to exercise effective local governance, so that they can exercise effective choices about their own development.

Principles of Engagement

UNDP is committed to using its comparative advantages to promote the inclusion of indigenous peoples in the decisions that affect them; to strengthen mutually respectful relationships between indigenous peoples and governments; empower indigenous peoples through greater local responsibility and local decision making; and strengthen indigenous peoples' physical and cultural security in their communities and territories. In particular, UNDP is committed to the following principles of engagement with indigenous peoples:

1. **Transparency**. Indigenous peoples should enjoy the greatest possible access to staff and information at all levels of UNDP.

2. **Respect for human rights**. UNDP should ensure that its own activities respect the rights of indigenous peoples, and promote respect for the rights of indigenous peoples in national development policies and

programs, especially in countries that have ratified relevant instruments such as ILO Convention No. 169.

3. **Inclusion and participation**. Representatives of indigenous peoples, as well as relevant indigenous expertise, should be included as far as possible at all levels in human development research, policy, planning, monitoring, and evaluation activities with which UNDP is associated.

4. **Trust-building**. UNDP will endeavor to earn the trust of indigenous peoples, and wherever possible, build trust and working relationships between indigenous peoples and governments.

In a 1993 paper on indigenous peoples' aspiration for self-determination, Erica-Irene A. Daes, chairperson of the UN Working Group on Indigenous Peoples from 1984 to 2000, advocated a process of nation-building "through which indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed upon and just terms, after many years of isolation and exclusion" leading to "the recognition and incorporation of [these] distinct peoples in the fabric of the State, on agreed terms." In its engagement with indigenous peoples, UNDP will be guided by this analysis.

The role of country offices

UNDP is in a unique position to promote the meaningful inclusion of indigenous peoples in decision-making because Resident Representatives play an important advisory and coordinating role in national capitals. UNDP is committed to supporting the efforts of Resident Representatives to inform themselves about the distribution and conditions of indigenous peoples in the country, develop consultative relationships with a wide variety of indigenous communities and their organizations, and pursue any realistic opportunity to bring government officials and indigenous peoples into constructive contacts with each other and with other key actors, such as corporations.

UNDP is also committed to supporting the efforts of Resident Representatives to mobilize interest, expertise and resources for indigenous peoples in their role as resident coordinators for the UN system, including efforts to promote indigenous peoples' direct and effective access to other relevant international offices and agencies.

Many national and sub-regional projects have a significant impact on indigenous peoples even if that is not their expressed intent. In countries where there are indigenous peoples, activities in remote rural areas that involve forestry, mining, *in situ* biodiversity conservation, pioneer agriculture, pioneer road building, the diversion or conservation of fresh water resources, or food security are likely to impact indigenous peoples. Activities aimed at the poorest and most transient urban populations in these countries are also very likely to involve indigenous peoples. Whenever UNDP supports these kinds of activities, an effort will be made to determine whether indigenous peoples are affected so that their representatives and interests can be included in decision making.

Effective engagement

Transparency and trust are essential if UNDP is to play an effective role in raising wider interest and support for indigenous peoples at the national level. It is essential that indigenous peoples feel confident that they have access to the Resident Representative, as well as access to adequate information about the role played by UNDP and the other UN system and multilateral agencies operating in their country. At the same time, Resident Representatives must be sensitive to the fact that indigenous organizations may represent diverse overlapping and conflicting constituencies and interests. Efforts to be selective or restrictive, whatever their motivation or objective, may undermine UNDP credibility and effectiveness, and should be avoided.

Government involvement and commitment are also essential for success in efforts to foster greater inclusion and empowerment of indigenous peoples. UNDP's capacity to act as an honest broker should be regarded as an indispensable asset, and one that must be protected through a policy of candor and neutrality in communicating with governments. UNDP should spare no effort in creating opportunities for indigenous peoples to advocate for themselves in an informed and effective manner; but it is not appropriate or effective for UNDP to be the advocate.

UNDP will support efforts by Resident Representatives and the regional bureaux to collaborate with other international agencies that

have relevant mandates and expertise, such as the ILO, FAO, UNSO, UNHCHR, and UNESCO, as well as the GEF, the World Bank, regional development banks, and bilateral and multi-bilateral donors. UNDP's role should focus on research, policy, information, coordination and the direct participation of indigenous peoples, rather than on development projects, except to the extent that special projects can help indigenous peoples strengthen their capacity to engage more effectively with governments and the international community.

A strong focal point for coordination and evaluation at UNDP headquarters is also essential to an effective focus on indigenous peoples. UNDP is committed to maintaining a high-level linkage with the Permanent Forum for Indigenous Peoples, other UN system focal points for indigenous peoples, and international indigenous peoples' organizations, as well as fostering inter-regional linkages for the exchange of expertise and experiences amongst Resident Representatives and indigenous peoples themselves.

Action at the National, Regional, and Headquarters Levels

UNDP will pursue its commitments to indigenous peoples through the following actions:

1. At the national and sub-regional levels, UNDP's Resident Representatives will consult informally with governments, and with indigenous peoples, to identify potential windows of opportunity for dialogue and consensus building around issues of human development.

2. Where possible, Resident Representatives should use their good offices to build trust and prevent conflict over land and resources by facilitating dialogue between indigenous peoples, governments, corporations and other important public and private actors.

3. Resident Representatives should compile national databases on indigenous peoples and directories of their organizations, for the use of UNDP and to share with other UN system offices and intergovernmental organizations.

4. Resident Representatives should offer to assist governments in disaggregating the data in their NHDR to show the specific conditions of indigenous peoples, and where possible involve indigenous peoples

in the design and collection of new datasets that better reflect the particular human development values of indigenous peoples.

5. In particular, Resident Representatives will raise the possibility of developing PRSPs in collaboration with indigenous peoples, and of providing assistance to governments and indigenous peoples in securing additional resources to put such plans into action.

6. Resident Representatives should help indigenous peoples find resources for their own initiatives in the fields of poverty prevention, poverty reduction, and peace-building, and in particular with respect to the security their lands.

7. Resident Representative should help indigenous peoples and governments identify and to the greatest possible extent utilize indigenous expertise in policy, research and training. This should include inter-regional exchanges of expertise wherever feasible.

8. Particular emphasis should be given to projects that bring together indigenous people and government officials with shared interests and concerns, such as joint training, joint research and data gathering, joint scenario-building and collaborative planning activities.

9. In their role as resident coordinators, Resident Representatives will collaborate with other UN, multilateral and bilateral agencies to promote a rational and effective division of labor, and raise awareness amongst indigenous peoples of the wide range of expertise and resources available from different parts of the international community.

10. UNDP's commitment to indigenous peoples will be reviewed periodically by the UNDP focal point on indigenous peoples at headquarters, and reported to the Permanent Forum for Indigenous Peoples.

11. The UNDP focal point will foster coordination with other UN system bodies and international organizations with mandates in this field in particular ILO, UNHCHR, UNSO, the Secretariat for the Convention on Biological Diversity, GEF and the World Bank.

12. UNDP will prepare a global assessment of strategies for the inclusion and culturally-appropriate and sustainable human development of indigenous peoples by the end of the International Decade of the World's

Indigenous People (December 2004).

Appendix E

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